

**BEFORE THE
BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES**

IN THE MATTER OF THE PREVENTION OF)
SIGNIFICANT DETERIORATION (PSD) AIR)
QUALITY PERMIT APPLICATION OF)
HYPERION ENERGY CENTER – HYPERION)
REFINING LLC)

Permit #28.0701-PSD

Draft Permit Issued: 9-08)
Final Proposed Permit Issued:)
Not Yet Issued)

RECEIVED

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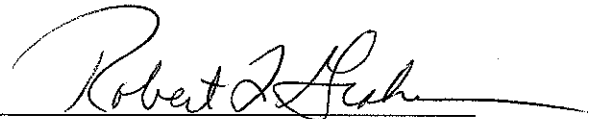
NOTICE OF FILING

AIR QUALITY
PROGRAM

To: See attached service list

YOU ARE HEREBY NOTIFIED that on November 7, 2008, the undersigned sent via Federal Express to be filed with the Office of the Secretary of the Department of Environment and Natural Resources, **CITIZENS OPPOSED TO OIL POLLUTION, SAVE UNION COUNTY, AND SIERRA CLUB'S NOTICE OF REQUEST TO BE HEARD AT PREHEARING CONFERENCE**; a true and correct copy of which is attached hereto.

Respectfully submitted,



Robert L. Graham
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*Attorneys for Citizens Opposed to
Oil Pollution, Save Union County,
and Sierra Club*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of: (1) NOTICE OF FILING; AND (2) CITIZENS OPPOSED TO OIL POLLUTION, SAVE UNION COUNTY, AND SIERRA CLUB'S NOTICE OF REQUEST TO BE HEARD AT PREHEARING CONFERENCE were served via Federal Express upon the parties listed in the attached service list.

Dated this 7th day of November, 2008.



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*Attorneys for Citizens Opposed to
Oil Pollution, Save Union County,
and Sierra Club*

SERVICE LIST

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Attorney General's Office
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Parties:

Air Quality Program, DENR:

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Applicant:

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Sioux Falls, SD 57104

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CITIZENS OPPOSED TO OIL POLLUTION, SAVE UNION COUNTY, AND SIERRA CLUB'S NOTICE OF REQUEST TO BE HEARD AT PREHEARING CONFERENCE

Citizens Opposed to Oil Pollution, Save Union County, and Sierra Club (collectively "Citizens"), by and through their undersigned attorneys, respectfully submit this Notice of Request to Be Heard at Prehearing Conference for the Contested Case Hearing initiated by Hyperion Oil Refining, LLC ("Hyperion"). In support thereof, Citizens state as follows:

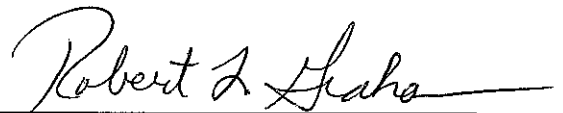
1. Citizens are environmental organizations whose members live in close proximity to and will be significantly impacted by the proposed Hyperion Energy Center. Citizens are preparing comments on Hyperion's Proposed Prevention of Significant Deterioration Air Quality Preconstruction Permit, issued by the Department of Environment and Natural Resources on September 11, 2008 ("Draft Permit"), that will be filed on or before November 14, 2008.
2. Citizens presently intend to file a Petition to Intervene in the Contested Case Hearing and to participate fully as a Party in those proceedings.
3. Citizens desire to be heard at the Prehearing Conference to be held on November 20, 2008. Citizens are opposed to the Motion for a Scheduling Order filed by Hyperion Resources, LLC, because it does not provide adequate time for meaningful public participation

in the Contested Case Hearing. Furthermore, as Citizens comments will establish, Hyperion's Permit Application is incomplete in material respects, and the issues it presents will require further significant review by experts before discovery can proceed. To accommodate the need for additional time, Citizens have attached a proposed Scheduling Order hereto as Exhibit A. Citizens believe that this proposed schedule will allow all parties the necessary time to prepare for and to participate fully in the Contested Case Hearing.

WHEREFORE, Citizens respectfully request that the Board grant their Request to Be Heard at the Prehearing Conference and enter the attached Scheduling Order.

Dated this 7th Day of November, 2008.

Respectfully submitted,



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SCHEDULING ORDER

It is hereby ORDERED as follows:

1. The parties shall adhere to the following schedule, which shall not be modified except by leave of the Hearing Chairman for good cause shown:

<u>DATE</u>	<u>EVENT/ACTION</u>
11/14/2008	Comments Due.
11/20/2008	Prehearing Conference.
11/21/2008- 3/20/2009	Written Discovery.
2/20/2009	Parties shall identify all experts expected to testify in the parties' cases in chief or cases in rebuttal and to provide all information regarding the expert(s) required by SDCL 15-6-26(b) and 15-6-26(e).
3/2/2009	Parties shall identify all lay witnesses expected to testify in the parties' cases in chief or cases in rebuttal.
3/20/2009- 6/22/2009	Depositions.
7/10/2009	Deadline to complete discovery.
8/3/2009	Deadline for dispositive motions.

8/31/2009	Final Prehearing Conference.
9/7/2009- 9/18/2009	Contested Case Hearing.
10/2/2009	Deadline to submit proposed findings of fact and conclusions of law.

Dated this ____ Day of _____, 2008.

Lee M. McCahren, Hearing Chair